UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/928,771
Filing Date: August 13, 2001
Appellant(s): BUCKMAN ET AL.

_____
Gary Hamilton
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 18, 2008 appealing from the Office

action mailed November 20, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| US 20020069274 A1 | Tindal, Glen D. et al. | June, 2002 |
| US 20020052941 A1 | Patterson, Martin | May, 2002 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1.   Claims 34, 47, and 60-69 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Tindal et al. (US 2002/0069274) (hereinafter Tindal) in view of

Patterson (US 2002/0052941).

2.   Referring to claim 34, Tindal discloses a system for programming a packet based

network having a plurality of nodes (i.e. network devices) for providing services to

network subscribers, the system comprising:

   a service creation tool (i.e. administrator 110) operable to program a service

   definition package (i.e. create a configuration record, or, if one is already defined,

   modifying a configuration record) (Figure 7, ref. 260; p. 2, ¶ 15);

   a service control center (i.e. network manager unit 140) interfaced with the packet-

   based network (i.e. network connecting unit 140 with devices 135) operable to

   accept said service definition package (i.e. configuration record) for deployment to at

   least one network node, said service control center comprising:

      a first logic element operable to select one or more network processors for

   implementing said service definition package (i.e. locate target network device)

   (Figure 7, ref. 285);

a second logic element operable to provide network processor-specific instructions (i.e. device-specific commands) and data (i.e. variables) to implement the changes in the configuration record (i.e. "generate commands required to configure target network device") (Figure 7, ref. 290; pp. 3-4, ¶ 35; pp. 5-6, ¶ 51-52);

a third logic element operable to load said instructions and data into said network processor (i.e. "push commands to target network device") (Figure 7, ref. 295; pp. 3-4, ¶ 35; pp. 5-6, ¶ 51-52);

a fourth logic element operable to monitor information from one or more network processors (i.e. health manager 180 operable to poll device to determine status, utilization, congestion, etc.) (p. 4, ¶ 39); and

a fifth logic element operable to utilize said information from said one or more network processors to report status information about said service definition package (i.e. health manager 180 can publish messages regarding network device problems, network problems, etc.) (p. 4, ¶ 39);

and

at least one network node (i.e. devices 135) interfaced with the network, the node having a network processor (an inherent feature, otherwise the device would be unable to execute any code regarding the configuration of the device), the node operable to perform one or more behaviors defined by the configuration record (p. 3, ¶ 27-28).

Tindal does not explicitly state that the configuration record defines a plurality of packet processing behaviors, rather that it is a configuration record and can enable the router (pp. 3-4, ¶ 35). In analogous art, Patterson discloses another system for programming a packet-based network having a plurality of nodes which discloses defining a service definition package defining a plurality of packet processing behaviors (i.e. logically connect various computing elements and storage devices in the system; load balancing configurations, and firewall configurations) (e.g. abstract; Figures 4B and 4C; pp. 15-16, ¶ 248-256). It would have been obvious to one of ordinary skill in the art to combine the teaching of Patterson with Tindal in order to allow the configuration records of Tindal to efficiently configure the device's functionality to an administrators specifications, resulting in a more efficient modification of the device.

3.   Claim 47 is rejected for similar reasons as stated above.

4.   Referring to claim 60, Tindal discloses the fourth logic element performs said monitoring indirectly using a proxy function (i.e. the health monitor can be construed as a proxy function since it monitors the devices on behalf of the network unit) (p. 4, ¶ 39).

5.   Referring to claim 61, Tindal discloses said proxy function utilizes an element manager function to provide access to information for said monitoring function (i.e.

polling to gather information from the devices or operate in passive mode and allow the devices to report their status to the monitor) (p. 4, ¶ 39).

6.   Referring to claim 62, Tindal discloses a sixth logic element operable to validate said network processors for implementing said service definition package (i.e. verify change against policy, verify that commands are installed, and publish completion indicator) (Figure 7, ref. 270, 300, and 305; p. 5, ¶ 51).

7.   Referring to claim 63, Tindal discloses a seventh logic element selectgs polling tasks used for said monitoring (i.e. health monitor polls devices to gather information from the devices) (p. 4, ¶ 39).

8.   Referring to claim 64, Tindal discloses receiving status information obtained from said monitoring and is able to determine potential network device problems (p. 4, ¶ 39), however does not specifically state summarizing the status information. In analogous art, Patterson discloses summarizing said status information received from said monitoring (i.e. generate reports based on status and performance of network nodes) (p. 18, ¶ 280). It would have been obvious to one of ordinary skill in the art to combine the teaching of Patterson with Tindal in order to in order to allow the configuration records of Tindal to efficiently configure the device's functionality to an administrators specifications, resulting in a more efficient modification of the device.

9.   Claims 65-69 are rejected for similar reasons as stated above.

(10) Response to Argument

Appellant's arguments (Brief, pages 4-5) have been fully considered and are refuted below.

Appellant argues, in substance, that Tindal is not directed to a system for service creation, rather is directed to configuration of network resources, which directed to a different aspect of providing network services. The Examiner disagrees. Appellant is reminded that the rejection is based on Tindal *in view of* Patterson. Tindal creates configuration records for a previously unconfigured device. The creation of the configuration record for the device can reasonably be construed as a service creation because it provides a service (i.e. permitting the router to be used as part of the network). The system will then take the configuration record and generate device specific commands for the particular make and model device. Furthermore, Patterson discloses a GUI which discloses *creating a service definition package* defining a plurality of packet processing behaviors (e.g. abstract: "a real world virtual server farm or data center may be *created and deployed"*; also *see* rejections above). Even assuming that Tindal does not disclose service creation, it has been clearly shown that Patterson explicitly discloses service creation. Appellant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are

based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871

(CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). By

this rationale, Tindal-Patterson clearly demonstrates service creation and therefore the

rejection should be maintained.

Appellant has not provided any other arguments against the rejections and

therefore the rejection against the claims over Tindal in view of Patterson should be

maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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